REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 11345-11346 OF 2018
(Arising out of SLP(C) Nos. 675-676 of 2017)

STATE OF TAMIL NADU & ANR. **Appellant(s)**

VERSUS

M. MANGAYARKARASI AND ETC. **Respondent(s)**

JUDGMENT

Dr. Dhananjaya Y. Chandrachud, J.

Leave granted.

These appeals arise from a judgment of the Division Bench of the High Court of Judicature at Madras dated 6.2.2015 by which writ appeals filed by the State of Tamil Nadu against the judgment of a learned Single Judge were dismissed.

The learned Single Judge, while disposing of the writ petitions filed by two employees of the State, interfered with the punishment of removal from service on the ground that it was shockingly disproportionate. The Single Judge substituted it by directing the stoppage of increments for a period of two years without cumulative effect.

The two employees, M. Mangayarkarasi and M. Jayalakshmi, were working as Superintendent and Accountant respectively in the District

Treasury at Salem. The charges against them were of having admitted and sanctioned bills of the office of the Assistant Commissioner of Commercial Taxes without proper verification, in accordance with the departmental procedures.

The case of the State is that during the period 1997-2000, a fraud involving misappropriation of a sum of Rs. 1.22 crores by the staff in the District Treasury Office, Salem came to light involving the presentation of 257 bogus bills in the Treasury. Following the submission of a Special Audit Report, a charge memo was issued against eleven members of the Treasury staff. Charges were framed in the course of the disciplinary proceedings. On the charges having been found to be established, the State Government issued an order of removal from service.

The orders of removal were challenged before the learned Single Judge.

The learned Single Judge interfered with the punishment on the ground that other employees against whom disciplinary proceedings had been initiated on similar charges had been subjected to a comparatively a lenient punishment of stoppage of increments.

The State Government, however, sought to justify the punishment on the ground that the quantum of loss caused due to the production of bogus bills in the case of the two employees was substantially higher. The learned Single Judge rejected this submission on the ground that the court would have to consider only the nature of the charge and not the quantum involved.

The Division Bench affirmed the judgment of the learned Single Judge, while dismissing the writ appeals filed by the State of Tamil Nadu. The Division Bench observed that it was conscious of the fact that in cases involving disciplinary proceedings, cases of two employees cannot as such be compared. However, it was of the view that since the charges against all the employees were identical and the employees were in the same cadre of ministerial service, the view of the learned Single Judge in applying parity of treatment could not be faulted. Moreover it was held that the violations were of a procedural nature.

On behalf of the appellants, it has been submitted that there is a clear distinction between the case of the two employees in question and others who were awarded minor punishments involving the stoppage of increments. This distinction is sought to be brought out from the following chart which is annexed to the present proceedings;

Sl. No.	Name of the Delinquent	No. of Bills	Amount misappropriated
1.	J. Nirmaladevi	6	Rs. 2,56,918/-
2.	P. Vardharajan	12	Rs. 4,59,527/-
3.	R. Anandan	8	Rs. 2,59,576/-
4.	R. Raghavan	19	Rs. 6,01,418/-
5.	**M. Mangayarkarasi**	**90**	**Rs. 45,28,003/-**
6.	**M. Jayalakshmi**	**105**	**Rs. 51,98,403/-**

It was urged that the two employees in the present case were involved in the verification of 90 and 105 bills respectively involving misappropriation of an amount of Rs. 45.28 lakhs and 51.98

lakhs respectively. Having regard to the gravity of the misconduct and the amount involved, it was urged on behalf of the appellants that the distinction which was made by the disciplinary authority could not be faulted.

On the other hand, it has been urged on behalf of the respondents that the High Court has taken a compassionate view of the matter having regard to the fact that the employees have, in the meantime, retired from service. Moreover, it was sought to be urged that the lapses were procedural and no financial benefit had accrued to the employees. Learned counsel for the respondents also submitted that there is no case of misappropriation against the two employees involved in the present appeals.

There are several reasons, in our view, why the approach of the High Court in the present case cannot be accepted.

First, in seeking to apply the principle of parity of treatment, the High Court has manifestly failed to notice that the gravity of misconduct which was established against the appellants was distinct from and of a more serious nature than what was found against the other employees. This ex-facie emerges from a perusal of the chart which has been extracted above. The nature and extent of a dereliction of duty and the consequences of the dereliction are significant matters which can legitimately be borne in mind by the disciplinary authority.

Second, while noticing that such a submission was in fact made before the learned Single Judge, the Division Bench proceeded to

apply the yardstick of parity. Parity could not be applied for the simple reason that there is a material distinction in the case of the misconduct alleged against the appellants as compared to the other employees. While the language of the charge may be similar in other cases that does not detract from the fact that the amount involved and the extent of the lack of verification in the case of the respondents is of a much higher order. The Division Bench having noticed that in a matter of this nature, the principle of parity cannot be attracted, nonetheless affirmed the view of the learned Single Judge. This is evidently erroneous.

Third, the approach of both the learned Single Judge and the Division Bench cannot be accepted having due regard to the parameters of judicial review in disciplinary matters. The learned Single Judge substituted the penalty which was imposed by the disciplinary authority, for a penalty which appeared to the Court to be just and proper. The imposition of a penalty in disciplinary proceeding lies in the sole domain of the employer. Unless the penalty is found to be shockingly disproportionate to the charges which are proved, the element of discretion which is attributed to the employer cannot be interfered with.

In this view of the matter, we are of the view that there is merit in the present appeals. However, since the High Court had interfered only on the ground of parity of treatment, it would be appropriate to remand the proceedings back for fresh consideration on

the other grounds of challenge to the findings in and outcome of the disciplinary proceedings.

To enable this process to be undertaken, we set aside the impugned judgment of the High Court dated 6.2.2015. The writ appeals shall stand restored to the file of the High Court for disposal afresh upon hearing the parties.

Since the employees have retired from service in the meantime, we request the High Court to expedite the disposal of the writ appeals and endeavor an expeditious disposal within six months from the date on which a certified copy of this order is placed on the record of the High Court.

We clarify that while we have disapproved of the view of the High Court on the question of parity, all other contentions of the parties are kept open to be adjudicated upon by the High Court.

The appeals are, accordingly, disposed of. No costs.

……J.
(DR. DHANANJAYA Y. CHANDRACHUD)

……J.
(M.R. SHAH)

NEW DELHI,
November 26, 2018